

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
 . 4:16-CR-118-A-3  
V. .  
 . Fort Worth, Texas  
WILLIAM JOSEPH OROZCO . October 12, 2016  
 . . . . .

TRANSCRIPT OF PROCEEDINGS  
(Sentencing Hearing)  
BEFORE THE HONORABLE JOHN MCBRYDE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MR. SHAWN SMITH  
United States Attorney's Office  
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For the Defendant: MR. PAUL T. LUND  
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Court Reporter: MS. ANA P. WARREN  
U.S. District Court Reporter  
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Proceedings recorded by mechanical stenography; transcript  
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P R O C E E D I N G S

(Commencing, 11:45 a.m.)

THE COURT: Okay. I'm calling for sentencing now in Case Number 4:16-CR-118-A, United States of America, and this time the defendant is William Joseph Orozco. Mr. Smith is here for the government, and Mr. Lund is here for Mr. Orozco.

Mr. Orozco, state your name for the record.

DEFENDANT OROZCO: William Joseph Orozco.

THE COURT: Okay. You appeared before me on May 26, 2016 when you pleaded guilty to the offense charged by Count 2 of the two count information, and the offense was conspiracy to possess with intent to distribute a controlled substance, and we're here today for sentencing based on the conviction resulting from that plea of guilty.

Mr. Lund, did you and your client receive in a timely manner the presentence report and the addendum to it?

MR. LUND: Yes, Your Honor.

THE COURT: And did both of you read those items and then discuss them with each other?

MR. LUND: We did, Your Honor.

THE COURT: Let's see. You made some objections to the presentence report. You've seen the probation officer's response and the government's response to those objections and my order expressing my tentative conclusion that they were

1 without merit. Do you still want to pursue any of those  
2 objections?

3 MR. LUND: Yes, Your Honor. We stand by the legal  
4 objection made in writing, and we have no further evidence to  
5 offer.

6 THE COURT: Okay. Let's take them up one at a time,  
7 then.

8 The first objection is to Paragraph 27 of the presentence  
9 report, and that's the paragraph giving the defendant a two  
10 level increase based on a firearm.

11 I'm not sure I'm understanding. Is he denying that he had  
12 a firearm?

13 MR. LUND: No, Your Honor. He's not disputing the  
14 facts as listed in the PSR or the PSR addendum at all. My  
15 objection is a legal objection stating that the evidence in  
16 the presentence report that Paragraph 27 relies on is not  
17 legally sufficient to apply the enhancement under United  
18 States versus Ramos, which I cite in my objection. That's 71  
19 F.3d 1150, Fifth Circuit 1995. It's merely a legal objection,  
20 Your Honor.

21 THE COURT: Okay.

22 (Brief pause in proceedings)

23 THE COURT: Okay. So he admits that he was  
24 present -- that Ishak was present at his residence in  
25 possession of multiple ounces of methamphetamine and a

1 firearm. He says that that's simply not enough to cause him  
2 to be held accountable?

3 MR. LUND: Yes, Your Honor. To be clear the  
4 defendant is not disputing that paragraph, which is Paragraph  
5 11 of the presentence report. I'm simply stating as his  
6 counsel I don't believe that's legally enough to apply the  
7 enhancement.

8 THE COURT: Now, the government has included in its  
9 response a -- and I'm sure you had this when you filed your  
10 objection -- an interview with Candace Whitten where she says  
11 that she witnessed Phil Ishak in possession of four ounces of  
12 methamphetamine and a handgun on six occasions at Will  
13 Orozco's residence. So it happened six times that he was  
14 there with a handgun.

15 (Brief pause in proceedings)

16 THE COURT: I'm not sure I understand what you're  
17 objecting. Obviously, they were engaged in jointly  
18 undertaking criminal activity, trafficking methamphetamine,  
19 and it's obvious that a gun is one of the tools of trade for  
20 that activity, and that your client could reasonably have  
21 foreseen that his co-offender or co-conspirator would have  
22 possession of the gun. So I'm going to overrule the  
23 objection. I don't understand why you're making that  
24 objection.

25 Is that the only objection you're making?

1 MR. LUND: Yes, Your Honor. That is the only  
2 objection in the presentence report, and there are no  
3 objections to the presentence report addendum.

4 THE COURT: Okay. There being no further objections,  
5 the Court adopts as the fact findings of the Court the facts  
6 set forth in the presentence report as modified or  
7 supplemented by the addendum and any facts I've found from the  
8 bench, and the Court adopts as the conclusions of the Court  
9 the conclusions expressed in the presentence report as  
10 modified or supplemented by any conclusions I've expressed  
11 from the bench.

12 The Court concludes that the Total Offense Level is 33.  
13 That the Criminal History Category is VI. That the guideline  
14 imprisonment range is 235 to 240 months. That's, I believe,  
15 capped at 240 by reason of the charging decision. Let's see.  
16 It would have been 235 to 293 months if the defendant had been  
17 charged with his true offense conduct.

18 The supervised release range is three years. The fine  
19 range is \$17,500 to \$1 million, and a special assessment of  
20 \$100 is mandatory.

21 Okay. Let's see. The government filed a motion for  
22 downward departure in this case?

23 MR. SMITH: Yes, Your Honor.

24 THE COURT: Okay. Does the government wish to offer  
25 any evidence in support of that?

1 MR. SMITH: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. SMITH: The government calls Agent Finney.

4 Did the Court state that the guideline range was 235 to  
5 240 months? Is that right?

6 THE COURT: That's what I said. Do you have some  
7 question about that?

8 MR. SMITH: No, Your Honor. I just wanted to make  
9 sure.

10 THE COURT: And I added what it would have been had  
11 it not been for the way he was charged it would have been up  
12 to 293, 235 to 293, had he been charged with his true offense  
13 conduct.

14 Go ahead.

15 MR. SMITH: Thank you, Your Honor.

16 BRIAN FINNEY, testified under oath as follows:

17 **DIRECT EXAMINATION**

18 BY MR. SMITH:

19 Q. Will you please state your name?

20 A. My name is Brian Finney.

21 Q. And your current occupation?

22 A. I'm a special agent with the Drug Enforcement  
23 Administration.

24 Q. Are you familiar with the case against Mr. Orozco?

25 A. Yes, I am.

1 Q. Will you tell the Court how Mr. Orozco has substantially  
2 assisted the government?

3 A. Yes. Prior to being indicted and arrested on this  
4 investigation in March of 2016, Mr. Orozco interviewed with  
5 agents from Homeland Security while Mr. Orozco was in the, I  
6 believe, custody of the Tarrant County Jail. Following his  
7 arrest, he also has provided proffer interviews with the  
8 government.

9 Based on those two statements and his cooperation, the  
10 government utilized Mr. Orozco's information to assist in the  
11 prosecution of a number of defendants. Those defendants would  
12 be:

13 Albert Cineceros, Terry Falkner, James Owens, Brittany  
14 Pierson, Drew Justice Windsor, and Jack Gossett. With  
15 Mr. Gossett, Mr. Orozco's information was the main information  
16 utilized -- one of the main people utilized in the prosecution  
17 of Mr. Gossett.

18 Additionally, Mr. Orozco has provided information that we  
19 anticipate using against seven future defendants in the next  
20 round of indictments on this case.

21 Q. Now, Mr. Gossett did go to trial, but the government did  
22 not use Mr. Orozco at Mr. Gossett's trial. Is that right?

23 A. That's correct. Mr. Orozco's information was one of the  
24 main reasons we charged Mr. Gossett. After Mr. Gossett was in  
25 custody, we identified some other witnesses and some other

1 evidence that we felt would be better utilized at the trial.

2 Q. And you said that his information would be used against  
3 how many future targets approximately?

4 A. Seven.

5 MR. SMITH: No further questions, Your Honor.

6 THE COURT: Okay. Do you have any questions you want  
7 to ask him?

8 MR. LUND: No, Your Honor.

9 THE COURT: Okay. You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: Okay. I find that the defendant has  
12 provided substantial assistance to the government in the  
13 investigation and prosecution of others and that he is  
14 eligible for a sentence below the bottom of the advisory  
15 guideline range. There are other factors the Court would have  
16 to consider, and I'll hear from the attorneys -- from the  
17 defendant's attorney on that subject.

18 Mr. Lund, you filed a document called Defendant Hindman's  
19 motion for downward variance, but it looks like it's intended  
20 to pertain to Mr. Orozco.

21 MR. LUND: That is correct, Your Honor. That was an  
22 unfortunate typo in the title on my part, and I apologize.

23 THE COURT: Okay. Did you want to offer any evidence  
24 in support of that other than what you've just heard?

25 MR. LUND: No, Your Honor, I do not.



1           THE COURT:   Okay.   Go ahead.   You can make whatever  
2           statement you would like to make on behalf of your client and  
3           include anything you want to say about the possibility of a  
4           sentence below the bottom of the advisory guideline range.

5           MR. LUND:   Thank you, Your Honor.

6           I'll rely primarily on the sentencing memorandum, which  
7           was previously filed on September 13 of this year.

8           THE COURT:   I've read that.

9           MR. LUND:   Thank you, Judge.

10          I would like to briefly state, as evidenced both in the  
11          PSR and the sentencing memorandum, Mr. Orozco is unique in the  
12          circumstance that the addiction that he has to methamphetamine  
13          began at a very, very young age, and it was in part -- it  
14          began when he was 12 years old.   He caught his sister using  
15          drugs, and his sister, rather than doing what I think most  
16          siblings would do, actually had him take drugs as well, so  
17          that if they were to get in trouble, he would get in trouble  
18          as well.

19          There is no doubt whatsoever that he has made a number of  
20          mistakes in his life since that point, but the nature of his  
21          addiction is such that it affected his brain chemistry as a  
22          child.   Methamphetamine is one of the more vicious drugs,  
23          frankly, to affect the brain chemistry of children, and I ask  
24          if the Court would consider that under 3553(a)(1)(A)(2)(c) and  
25          (d).

1           And beyond that, Your Honor, I would simply ask the  
2           government grant -- excuse me. I would ask the Court grant  
3           the government's motion and sentence Mr. Orozco to a term  
4           below the guideline range.

5           THE COURT: Mr. Orozco, you have the right to make  
6           any statement or presentation you would like to make on the  
7           subject of mitigation, that is, the things you think the Court  
8           should take into account in determining what sentence to  
9           impose or on the subject of sentencing more generally, and at  
10          this time I'll invite you to do that.

11          MR. LUND: Your Honor, I've spoken with Mr. Orozco  
12          extensively on this, and he's very overcome by the emotion of  
13          the situation and not having family present due to where he  
14          currently lives, and as a result, he would rather not address  
15          the Court. He would rather I do it for him.

16          THE COURT: Okay. Do you have anything else you want  
17          to say?

18          MR. LUND: Your Honor, I would ask that the Court  
19          recommend the facility at FCI Sheridan, which is in Oregon.  
20          That is the location nearest to where his sister lives in the  
21          Pacific Northwest. We are hopeful that by his being placed at  
22          the Bureau of Prisons, that he would be able to have more  
23          family contact, and we would ask the Court to recommend RDAP  
24          or other drug treatment options be made available to  
25          Mr. Orozco during his sentence so that, hopefully, he can

1 overcome his addiction.

2 THE COURT: Okay. He does have quite a criminal  
3 history. Almost ten pages of the presentence report are  
4 devoted to his criminal history.

5 Possession of marijuana starting at age 25. Possession of  
6 methamphetamine at age 27. Possession of methamphetamine,  
7 again, at age 28. Assaulting a bodily member at age 29.  
8 Again at age 29, possession with intent to deliver  
9 methamphetamine. Again at age 29, another possession of  
10 methamphetamine. At age 33, again, assaulting a body member.  
11 Age 34, possession of a controlled substance, again,  
12 methamphetamine.

13 He has several offenses that he wasn't convicted of but  
14 admitted his guilt or I can tell from the information in the  
15 presentence report that he committed the offense. At age 27,  
16 he admitted his guilt to possession of a controlled substance,  
17 a plea in bar. He did that twice at age 27.

18 At age 29, he, again, admitted possession of a controlled  
19 substance as part of a plea in bar. He did that twice at age  
20 29. At age 39, he was charged with evading arrest with a  
21 vehicle, and that's still pending, apparently. Unauthorized  
22 use of a vehicle is still pending.

23 And I think it's appropriate to consider that had the  
24 defendant been charged with his true offense conduct, his  
25 offense level would have been higher, but the bottom of his

1 offense level would have been different. Maybe that's not  
2 that significant a factor.

3 I'm going to give the defendant a sentence below the  
4 bottom of his guideline range to take into account his  
5 cooperation with the government. I'm going to reduce it, the  
6 bottom of the guideline range, from 235 to sentence him to 210  
7 months. That will knock off a little over two years, and I  
8 think a sentence of that kind is one that adequately and  
9 appropriately addresses all the factors the Court should  
10 consider in sentencing under 18, United States Code, Section  
11 3553(a), and also takes into account his assistance and  
12 cooperation with the government.

13 The sentence I've described would be consecutive to the  
14 state court sentences in Case Numbers 1447855 and 1447851 that  
15 are pending in Criminal District Court Number 1 of Tarrant  
16 County in Case Number F1652628 pending in the 282nd Judicial  
17 District Court of Dallas County, Texas. They are all  
18 unrelated, cases unrelated to the offense in this case.

19 That sentence of imprisonment I've described would be  
20 combined with a term of supervised release of three years once  
21 he's completed his sentence of imprisonment in this case. An  
22 obligation to pay a special assessment of \$100 would be  
23 payable immediately to the United States of America through  
24 the office of the clerk of the Court.

25 All of those factors -- elements of the sentence in my

1 view constitute a sentence that is an appropriate sentence  
2 under 18, United States Code, Section 3553(a), that takes into  
3 account all the factors the Court should consider under that  
4 statute as well as his cooperation with the government.

5 So the Court's ordering and adjudging that the defendant  
6 be committed to the custody of the Bureau of Prisons to serve  
7 a term of imprisonment of 210 months. I'm also ordering that  
8 the defendant serve a term of supervised release of three  
9 years -- and by the way, that sentence of imprisonment is  
10 consecutive to the state court sentences -- or the sentences  
11 in the state court cases that I mentioned a moment ago.

12 I'm also ordering that the defendant serve a term of  
13 supervised release of three years once he's served he's served  
14 his sentence of imprisonment in this case. And the conditions  
15 of that supervised release will be the standard conditions  
16 that will be set forth in the judgment of conviction and  
17 sentence and the following additional conditions:

18 He shall not commit another federal, state, or local  
19 crime. He shall not possess illegal controlled substances.  
20 He shall cooperate in the collection of DNA as directed by the  
21 probation officer. He shall refrain from any unlawful use of  
22 a controlled substance, and shall submit to one drug test  
23 within 15 days of release from imprisonment and at least two  
24 periodic drug tests thereafter as directed by to probation  
25 officer pursuant to the mandatory drug testing provision of

1 the 1994 Crime Bill.

2 He shall participate in mental health treatment services  
3 as directed by the probation officer until successfully  
4 discharged, and those services may include prescribed  
5 medications by a licensed physician, and he will contribute to  
6 the cost of those services at the rate of at least \$25 a  
7 month.

8 He shall participate in a program approved by the  
9 probation officer for treatment of narcotic or drug or alcohol  
10 dependency that would include testing for the detection of  
11 substance use, and he shall abstain from the use of alcohol  
12 and all other intoxicants during and after completion of that  
13 treatment, and he will contribute to the cost of those  
14 services at least \$25 a month.

15 I'm also ordering that he pay a special assessment of  
16 \$100. That's payable immediately to the United States of  
17 America through the office of the clerk of the Court here in  
18 Fort Worth.

19 Mr. Orozco, you have the right to appeal from the sentence  
20 I've imposed if you're dissatisfied with it. That appeal  
21 would be to the United States Court of Appeals for the Fifth  
22 Circuit. You have the right to appeal in forma pauperis.  
23 That means without any cost to you if you qualify for it.  
24 You have the right to have the clerk of the Court file a  
25 notice of appeal for you, and the clerk will do that forthwith

1 if you were to specifically request it.

2 You and your attorney have been given a form that outlines  
3 certain rights and obligations in reference to an appeal. If  
4 you haven't already done so, I want the two of you to review  
5 it and be sure you understand it, and once both of you are  
6 satisfied you understand it, I want both of you to sign it and  
7 return it to the Court coordinator.

8 Has that been done?

9 MR. LUND: Your Honor, it has, and the defendant  
10 would like to note for appellate purposes that he objects to  
11 the reasonableness of the sentence.

12 THE COURT: Pardon?

13 MR. LUND: The defendant would like to note for  
14 appellate purposes that he objects to the reasonableness of  
15 the sentence.

16 THE COURT: Okay.

17 MR. LUND: And with regard to the recommendation for  
18 FCI Sheridan, I'm not sure if I heard the Court issue --  
19 decide whether or not it would issue such a recommendation to  
20 the Bureau of Prisons.

21 THE COURT: You mean a recommendation as to a  
22 particular location?

23 MR. LUND: Yes.

24 THE COURT: I don't make those recommendations.

25 MR. LUND: I understand that, Judge.

1           And the final thing I'll say is that now that a sentence  
 2           has been passed, given the sensitive nature of both the  
 3           defendant's cooperation and the circumstances surrounding that  
 4           potential information being in the presentence report, I would  
 5           ask the Court to instruct the probation officer in this case  
 6           to amend the presentence report now that sentencing has  
 7           concluded to keep the specifics of Paragraph 17 with regard to  
 8           the defendant's cooperation out of the document itself for  
 9           fear that it might be seen --

10           THE COURT: Okay. We went through this the last time  
 11           you were over here, and we discussed the different things that  
 12           prevent anybody from getting access to the presentence report,  
 13           including the provision that the Bureau of Prisons won't allow  
 14           anybody to have access, and so I'm not going to order the  
 15           probation officer to do that.

16           Okay. The defendant is remanded to custody, and the  
 17           attorneys are excused.

18           (End of proceedings, 12:10 p.m.)

19                           -oOo-

21                           I N D E X

22   Witnesses:	Direct	Cross	Redirect	Recross
23   Brian Finney	6			

25                           -oOo-



CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, and that the transcript was prepared by me and under my supervision.

s/ Ana P. Warren  
Ana P. Warren, CSR #2302  
U.S. District Court Reporter

December 12, 2016  
Date

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